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9 PAUL SPECTOR and JOAN BURGESS

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAUL SPECTOR and JOAN BURGESS

Plaintiff,

v.

SAN FRANCISCO LODGING, LLC dba
PACIFICA BEACH HOTEL

Defendants.

CASE NO.
Civil Rights

**COMPLAINT FOR PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF AND
DAMAGES:**

- 1. Violations of Americans with Disabilities Act
of 1990 (42 U.S.C. § 12101 *et seq.*)**
- 2. Violation of the California Unruh Act (Cal.
Civil Code §§ 51 and 52)**
- 3. Violation of the California Disabled Persons
Act (Cal. Civil Code § 54 *et seq.*)**

DEMAND FOR JURY TRIAL

Plaintiffs PAUL SPECTOR and JOAN BURGESS complain of Defendant SAN FRANCISCO LODGING, LLC dba PACIFICA BEACH HOTEL, and allege as follows:

1. **INTRODUCTION:** Defendant forced disabled Plaintiff Spector and his companion Plaintiff Burgess to pay extra fees to stay at its hotel because Plaintiff Spector uses a service dog. On August 18, 2023, Plaintiffs were in the Pacifica area for a vacation, and they were searching for a hotel which would accept Plaintiff Spector's service dog without charging them a fee or requiring unidentified "paperwork" for a service dog to stay in the room. Plaintiff Spector went to the Pacifica Beach Hotel, and Defendant's employee told him that he would be

1 charged a \$60 per night fee for his service dog. On that occasion, Plaintiffs left to try to find
 2 another accommodation which would not charge them an extra fee.

3 2. On October 6, 2023, Plaintiffs returned to the Pacifica area to escape the heat in
 4 the Bay Area. Prior to leaving their home, Plaintiffs checked the Pacifica Beach Hotel website
 5 which stated that service dogs were welcome, so Plaintiffs booked a room for two nights. When
 6 Plaintiff Spector checked into the Pacifica Beach Hotel located at 525 Crespi Drive, Pacifica
 7 California, Defendant forced Plaintiffs to pay an extra \$60/night so that he could be accompanied
 8 by his service dog Koko while they stayed Pacifica Beach Hotel. Despite a conversation with
 9 Defendant's employee, Defendant refused to waive the fee for Plaintiff Spector's service dog,
 10 explicitly stating on video that the fee applied to them.

11 3. Plaintiffs love visiting the Pacifica area for vacations and weekend trips. The
 12 Pacifica Beach Hotel is a picturesque property and conveniently located for Plaintiffs. They
 13 intend to return to the hotel in the future but cannot do so until the policies of the hotel are made
 14 accessible to disabled individuals who use service dogs and those associated with them, including
 15 revision of its service dog policies and necessary employee training and/or re-training. Plaintiffs
 16 have brought this lawsuit to force Defendant to change its discriminatory and illegal policies and
 17 compensate them for charging them extra fees to stay at the hotel because Plaintiff Spector is a
 18 disabled person who needs the assistance of his qualified service dog, and Plaintiff Burgess is
 19 associated with him. Plaintiffs seek an injunction to protect the rights of all disabled persons and
 20 those associated with them, including Plaintiffs, when accompanied by a qualified service dog at
 21 the Pacifica Beach Hotel.

22 4. **JURISDICTION:** This Court has jurisdiction of this action pursuant to 28 USC
 23 sections 1331 and 1343. This Court has jurisdiction over the claims brought under California law
 24 pursuant to 28 U.S.C. § 1367.

25 5. **VENUE:** Venue is proper in this court pursuant to 28 USC section 1391(b) and is
 26 proper because the real property which is the subject of this action is located in this district and
 27 that Plaintiff's causes of action arose in this district.

28 6. **INTRADISTRICT:** This case should be assigned to the San Francisco

1 intradistrict because the real property which is the subject of this action is located in this
 2 intradistrict and Plaintiffs' causes of action arose in this intradistrict.

3 **7. PARTIES:** Plaintiff Paul Spector is a professional nurse and "qualified" disabled
 4 person and veteran who uses the assistance of a service dog for mobility. He is also a strong
 5 proponent of the ADA and enforcing the laws regarding service dog access because he has
 6 frequently been denied access to public places because of his service dog. Plaintiff was injured in
 7 a very serious car accident in 2012 which left him with residual pain and weakness in his left
 8 knee and arthritis, all of which cause him difficulty in walking, balancing, and standing for long
 9 periods of time. Plaintiff's knee can give out while he is walking which could cause him to fall
 10 down. Plaintiff relies upon his service dog, a Belgium Shephard named "Koko," to assist him
 11 with certain tasks including pulling him upstairs and hills while they are walking. He also can
 12 assist Plaintiff with stabilizing his balance. Koko has been trained to walk on Plaintiff's left side,
 13 and when Claimant's knee begins to weaken, Koko leans his considerable weight against Plaintiff
 14 and allows him to lean against Koko which provides Plaintiff with necessary stability and support
 15 to take some pressure off of his weak left knee. Additionally, Koko is trained to assist Plaintiff in
 16 getting down to the floor and back up when he needs to retrieve dropped objects. Koko was
 17 professionally trained to be service dog. Additionally, Plaintiff continues to reinforce the training
 18 with Koko daily. Plaintiff is a qualified person with a disability as defined under federal and state
 19 law. 42 U.S.C. § 12102, 29 U.S.C. § 705(9)(B), and California Government Code § 12926(1).

20 **8.** Plaintiff Joan Burgess is Plaintiff Paul Spector's partner. Plaintiff Joan Burgess
 21 was denied access to the Pacifica Beach Hotel, because Defendant refused to allow Plaintiff
 22 Spector to be accompanied by his service dog at the hotel without charging an extra fee. Plaintiff
 23 Burgess has standing for injunctive relief and damages under state law and under the Americans
 24 with Disabilities Act of 1990. Per 42 U.S.C. section 12182(b)(1)(E), "It shall be discriminatory
 25 to exclude or otherwise deny equal goods, services, facilities, privileges, advantages,
 26 accommodations, or other opportunities to an individual or entity because of the known disability
 27 of an individual with whom the individual or entity is known to have a relationship or
 28 association." *Nevarez v. Forty Niners Football Co.*, No. 16-CV-07013-LHK, 2017 WL 3288634,

1 at *5 (N.D. Cal. Aug. 1, 2017). Plaintiff Burgess suffered an injury that is “specific, direct and
 2 separate from” that of her partner. *Id.* at *5. At all relevant times mentioned here, Plaintiff
 3 Burgess was with Plaintiff Spector and suffered damages due to her associative standing as her
 4 companion during the August 18, 2023, and October 6, 2023, incidents described herein. Both
 5 have been and will be deterred by these discriminatory acts and policies of Defendant described
 6 herein until these policies are changed and Defendant is required by injunction and court order to
 7 provide and enforce nondiscriminatory policies.

8 9. Defendant SAN FRANCISCO LODGING, LLC dba PACIFICA BEACH
 9 HOTEL, are and were at all times relevant to this Complaint the owner, operator, lessor and/or
 10 lessee of the subject business located at 525 Crespi Drive, Pacifica, California, known as the
 11 Pacifica Beach Hotel.

12 10. Pacific Beach Hotel is a place of “public accommodation” and a “business
 13 establishment” subject to the requirements *inter alia* of the categories of 42 U.S.C.
 14 section 12181(7) of the Americans with Disabilities Act of 1990, of California Civil Code
 15 sections 51 *et seq.*, and of California Civil Code sections 54 *et seq.*

16 11. **FACTUAL STATEMENT:** Plaintiff Paul Spector has been working with his
 17 service dog Koko for almost two years. Koko is a Belgium Shephard who was both
 18 professionally trained and individually trained to be a service dog. Plaintiff has also trained and
 19 continues to train Koko to serve his specific needs throughout their relationship. Koko is
 20 specifically trained to assist Plaintiff with mobility, including stabilizing him if his knee gives
 21 out, assisting him up hills and stairs, and assisting him in bending down to retrieve objects at
 22 floor level.

23 12. Koko is a working dog; he is not a pet. Plaintiff and Koko have trained
 24 extensively together, and they supplement that training daily. Plaintiff takes Koko everywhere
 25 with him in public. It is important they stay together as much as possible because (a) Koko
 26 provides important services for Plaintiff; and (b) it is part of the training and bonding requirement
 27 that they be together constantly to maintain their bond. With few exceptions, where Plaintiff
 28 goes, Koko goes.

1 13. Plaintiffs decided to take a vacation together during the third week of August.
 2 Both Plaintiffs love traveling to the Pacifica area to stay near the beach, so they decided to start
 3 their trip in Pacifica leaving open the possibility of driving down the coast towards Southern
 4 California after a few days.

5 14. On August 16, 2023, Plaintiff Burgess, Plaintiff Spector and Koko drove from
 6 their home in the East Bay to Pacifica. They stayed at a hotel called the Inn at Rockaway, not a
 7 part of this lawsuit, for the nights of August 16th and August 17th. However, the Inn at Rockaway
 8 charged them a nightly fee for Plaintiff Spector's service dog, so Plaintiffs decided to look for
 9 alternative accommodations in Pacifica where Plaintiff Spector's service dog Koko would be
 10 allowed to stay for free.

11 15. After checking out of the Inn at Rockaway on Friday, August 18, 2023, Plaintiffs
 12 started looking for other accommodations in Pacifica. Plaintiffs had breakfast at a restaurant near
 13 the Pacifica Beach Hotel, and they both thought the property looked lovely and would be a great
 14 place to continue their vacation. Plaintiff Spector went to the lobby of the Pacifica Beach Hotel
 15 to inquire about availability and rates.

16 16. The Pacifica Beach Hotel did have rooms available, so Plaintiff Spector asked if
 17 they charged for dogs. Defendant's employee at the lobby counter said that there was \$60 fee for
 18 dogs. Plaintiff Spector then clarified that he had meant service dogs, and Defendant's employee
 19 stated that there is a \$60 fee for service dogs as well. She explained that the fee applies equally to
 20 pets and service dogs. Plaintiffs were deterred from staying at the Pacifica Beach Hotel on
 21 August 18, 2023, because of the fee for service dogs charged by Defendant. Plaintiffs a near
 22 retirement age and had a budget they needed to keep for the vacation they were taking. Neither
 23 Plaintiff had accounted for extra hotel fees for Plaintiff Spector's service dog. Ultimately,
 24 Plaintiffs decided to end their vacation after only two days and returned home feeling more
 25 stressed than they had when they left home.

26 17. On October 6, 2023, Plaintiffs decided to take an impromptu trip to Pacifica to
 27 escape the heat in the Bay Area. Plaintiff Spector started looking online for a hotel. He saw on
 28 the Pacifica Beach Hotel website that they had rooms available, and that Defendant advertised

1 “Service Support Animals Welcome.” Based on this assurance, and believing this meant the
2 policy had changed, Plaintiffs reserved a room for the nights of October 6, 2023, and October 7,
3 2023, at the Pacifica Beach Hotel.

4 18. When Plaintiffs arrived at the Pacific Beach Hotel on October 6, 2023, Plaintiff
5 Spector went into the lobby to check-in. He gave his name to Defendant's employee at the
6 check-in, and he let her know that there would be two adults staying in the room. He also
7 informed her that he had a service dog with him who would also be staying in the room.

8 19. Defendant's employee behind the lobby desk told Plaintiff Spector that he would
9 have to pay a \$60 per night fee for his dog. Plaintiff Spector reiterated that his dog is service dog,
10 and Defendant's employee told him that the pet fee applies to service dogs too. She explained
11 that it is a fee for cleaning and Defendant does not waive the fee for service dogs. Plaintiff
12 Spector told her that he was surprised that Defendant would charge for service dogs. Defendant's
13 employee told Plaintiff that the fee used to be \$100 per night for any dog but was dropped to \$60
14 per night.

15 20. Plaintiffs paid the \$60 nightly fee for Plaintiff Spector's service dog, but they were
16 upset by the extra charge that they had not expected to pay, and Plaintiff Spector took unbridged
17 with the flaunting of the law.

18 21. Plaintiffs wish to return to the Pacifica Beach Hotel, but only *after* Defendants
19 have implemented proper service animal policies and training of their staff. Plaintiffs are deterred
20 from returning to the motel until these policies and training are in place.

**FIRST CAUSE OF ACTION:
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990
(42 USC §§ 12101 *et seq.*)**

23 22. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
24 the factual allegations contained in Paragraphs 1 through 21, above, and incorporates them herein
25 by reference as if separately replied hereafter.

26 23. In 1990 Congress passed the Americans with Disabilities Act after finding that
27 laws were needed to more fully protect "some 43 million Americans with one or more physical or
28 mental disabilities; that historically society has tended to isolate and segregate individuals with

1 disabilities;” that “such forms of discrimination against individuals with disabilities continue to
 2 be a serious and pervasive social problem”; that “the Nation’s proper goals regarding individuals
 3 with disabilities are to assure equality of opportunity, full participation, independent living and
 4 economic self-sufficiency for such individuals”; and that “the continuing existence of unfair and
 5 unnecessary discrimination and prejudice denies people with disabilities the opportunity to
 6 compete on an equal basis and to pursue those opportunities for which our free society is
 7 justifiably famous.” 42 U.S.C. § 12101(a).

8 24. The ADA provides, “No individual shall be discriminated against on the basis of
 9 disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages,
 10 or accommodations of any place of public accommodation by any person who owns, leases, or
 11 leases to, or operates a place of public accommodation.” 42 USC § 12182.

12 25. Plaintiff Spector is a qualified individual with a disability as defined in the
 13 Rehabilitation Act and in the Americans with Disabilities Act of 1990. Plaintiff Burgess is his
 14 companion and partner, and she has standing for injunctive relief and damages under state law
 15 and under the Americans with Disabilities Act of 1990 through her association with Plaintiff
 16 Spector and due to damages she personally incurred as a result of the incidents on August 18,
 17 2023 and October 6, 2023. Per 28 CFR § 36.2015, “A public accommodation shall not exclude or
 18 otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other
 19 opportunities to an individual or entity because of the known disability of an individual with
 20 whom the individual or entity is known to have a relationship or association.”

21 26. Pacifica Beach Hotel is a public accommodation within the meaning of Title III of
 22 the ADA. 42 U.S.C. § 12181(7)(A).

23 27. The ADA prohibits, among other types of discrimination, “failure to make
 24 reasonable modifications in policies, practices or procedures when such modifications are
 25 necessary to afford such goods, services, facilities, privileges, advantages or accommodations to
 26 individuals with disabilities.” 42 U.S.C. § 12182(b)(2)(A)(ii).

27 28. Under the “2010 Revised ADA Requirements: Service Animals,” as published by
 28 the United States Department of Justice, and distributed by the DOJ’s Civil Rights Division,

1 Disability Rights Section, “Generally, title II and title III entities must permit service animals to
 2 accompany people with disabilities in all areas where members of the public are allowed to go.”
 3 ADA 2010 Revised Requirements, www.ada.gov/service-animals-2010.htm Further,

4 **Under the ADA, State and local governments, businesses, and nonprofit
 5 organizations that serve the public generally must allow service animals to
 6 accompany people with disabilities in all areas of the facility where the public
 is normally allowed to go.**

7 *Ibid.*, emphasis in original.

8 29. Defendant has a policy and practice of charging guests with service animals an
 9 extra nightly fee at the Pacifica Beach Hotel.

10 30. On information and belief, as of the date of Plaintiffs’ most recent visits to Pacifica
 11 Beach Hotel on or about August 18, 2023, and October 6, 2023, Defendant continues to deny full
 12 and equal access to Plaintiffs and to discriminate against Plaintiffs on the basis of Plaintiff
 13 Spector’s disabilities and Plaintiff Burgess’ association with Plaintiff Spector, thus wrongfully
 14 denying to Plaintiffs the full and equal enjoyment of the goods, services, facilities, privileges,
 15 advantages and accommodations of Defendant’s premises, in violation of the ADA.

16 31. In passing the Americans with Disabilities Act of 1990 (hereinafter “ADA”),
 17 Congress stated as its purpose:

18 It is the purpose of this Act

19 (1) to provide a clear and comprehensive national mandate for the elimination of
 20 discrimination against individuals with disabilities;
 21 (2) to provide clear, strong, consistent, enforceable standards addressing discrimination
 22 against individuals with disabilities;
 23 (3) to ensure that the Federal Government plays a central role in enforcing the standards
 24 established in this Act on behalf of individuals with disabilities; and
 25 (4) to invoke the sweep of congressional authority, including the power to enforce the
 26 fourteenth amendment and to regulate commerce, in order to address the major areas of
 27 discrimination faced day-to-day by people with disabilities.

28 42 USC § 12101(b).

29 32. As part of the ADA, Congress passed “Title III - Public Accommodations and
 30 Services Operated by Private Entities” (42 USC § 12181 *et seq.*). The subject property and

1 facility are one of the “private entities” which are considered “public accommodations” for
 2 purposes of this title, which includes any “hotel, motel or other place of lodging.” 42 USC §
 3 12181(7)(A).

4 33. The ADA states that “No individual shall be discriminated against on the basis of
 5 disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages,
 6 or accommodations of any place of public accommodation by any person who owns, leases, or
 7 leases to, or operates a place of public accommodation.” 42 U.S.C. § 12182. The specific
 8 prohibitions against discrimination include, but are not limited to the following:

9 § 12182(b)(1)(A)(ii): “Participation in Unequal Benefit. - It shall be discriminatory to afford an
 10 individual or class of individuals, on the basis of a disability or disabilities of such individual or
 11 class, directly, or through contractual, licensing, or other arrangements, with the opportunity to
 12 participate in or benefit from a good, service, facility, privilege, advantage, or accommodation
 13 that is not equal to that afforded to other individuals.”

14 § 12182(b)(2)(A)(ii): “a failure to make reasonable modifications in policies, practices, or
 15 procedures when such modifications are necessary to afford such goods, services, facilities,
 16 privileges, advantages, or accommodations to individuals with disabilities...;”

17 § 12182(b)(2)(A)(iii): “a failure to take such steps as may be necessary to ensure that no
 18 individual with a disability is excluded, denied service, segregated, or otherwise treated
 19 differently than other individuals because of the absence of auxiliary aids and services...;”

20 § 12182(b)(2)(A)(iv): “a failure to remove architectural barriers, and communication barriers that
 21 are structural in nature, in existing facilities... where such removal is readily achievable;”

22 § 12182(b)(2)(A)(v): “where an entity can demonstrate that the removal of a barrier under clause
 23 (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges,
 24 advantages, or accommodations available through alternative methods if such methods are readily
 25 achievable.”

26 The acts and omissions of Defendants set forth herein were in violation of Plaintiffs'
 27 rights under the ADA and the regulations promulgated thereunder, 28 C.F.R. Part 36 *et seq.*

28 34. The removal of each of the policy barriers complained of by Plaintiffs as

1 hereinabove alleged, were at all times herein mentioned “readily achievable” under the standards
 2 of sections 12181 and 12182 of the ADA. As noted hereinabove, removal of each and every one
 3 of the policy barriers complained of herein were already required under California law. In the
 4 event that removal of any barrier is found to be “not readily achievable,” Defendants still violated
 5 the ADA, per section 12182(b)(2)(A)(v) by failing to provide all goods, services, privileges,
 6 advantages and accommodations through alternative methods that were “readily achievable.”

7 35. On information and belief, as of the dates of Plaintiffs’ encounters at the premises
 8 and as of the filing of this Complaint, Defendant’s actions, policies, and physical premises have
 9 denied and continue to deny full and equal access to Plaintiffs and to other disabled persons who
 10 work with service dogs and those persons associated with them, which violates Plaintiffs’ right to
 11 full and equal access and which discriminates against Plaintiff Spector on the basis of his
 12 disabilities and against Plaintiff Burgess based upon her association with Plaintiff Spector, thus
 13 wrongfully denying to Plaintiffs the full and equal enjoyment of the goods, services, facilities,
 14 privileges, advantages and accommodations, in violation of 42 U.S.C. sections 12182 and 12183
 15 of the ADA.

16 36. Defendant’s actions continue to deny Plaintiffs’ rights to full and equal access by
 17 deterring Plaintiffs from patronizing the Pacifica Beach Hotel and discriminated and continue to
 18 discriminate against Plaintiff Spector on the basis of his disabilities and Plaintiff Burgess on the
 19 basis of her association with a disable person who uses a service dog, thus wrongfully denying to
 20 Plaintiffs the full and equal enjoyment of Defendants’ goods, services, facilities, privileges,
 21 advantages and accommodations, in violation of section 12182 of the ADA. 42 U.S.C. § 12182.

22 37. Pursuant to the Americans with Disabilities Act, 42 U.S.C. sections 12188 *et seq.*,
 23 Plaintiffs are entitled to the remedies and procedures set forth in section 204(a) of the Civil Rights
 24 Act of 1964, 42 USC 2000(a)-3(a), as Plaintiff Spector is being subjected to discrimination on the
 25 basis of his disabilities and Plaintiff Burgess is being subjected to discrimination based on her
 26 association with disabled Plaintiff Spector in violation of sections 12182 and 12183. On
 27 information and belief, Defendant has continued to violate the law and deny the rights of
 28 Plaintiffs and other disabled persons and those associated with them to “full and equal” access to

1 this public accommodation since on or before Plaintiff's encounters. Pursuant to
 2 section 12188(a)(2)

3 [i]n cases of violations of § 12182(b)(2)(A)(iv) and § 12183(a)... injunctive relief
 4 shall include an order to alter facilities to make such facilities readily accessible to
 5 and usable by individuals with disabilities to the extent required by this title. Where
 6 appropriate, injunctive relief shall also include requiring the provision of an
 auxiliary aid or service, modification of a policy, or provision of alternative
 methods, to the extent required by this title.

7 38. Plaintiffs seek relief pursuant to remedies set forth in section 204(a) of the Civil
 8 Rights Act of 1964 (42 USC 2000(a)-3(a)), and pursuant to Federal Regulations adopted to
 9 implement the Americans with Disabilities Act of 1990. Plaintiff Spector is a qualified disabled
 10 person for purposes of § 12188(a) of the ADA who is being subjected to discrimination on the
 11 basis of disability in violation of Title III and who has reasonable grounds for believing he will be
 12 subjected to such discrimination each time that he may use the property and premises, or attempt
 13 to patronize the Pacifica Beach Hotel, in light of Defendant's policies barriers. Plaintiff Burgess
 14 seeks similar relief as she continues to be discriminated against based upon her association with
 15 disabled Plaintiff Spector, her partner and companion.

16 WHEREFORE, Plaintiffs pray for relief as hereinafter stated.

17 **SECOND CAUSE OF ACTION:**
 18 **VIOLATION OF CALIFORNIA LAW INCLUDING: THE UNRUH ACT, CIVIL
 CODE SECTIONS 51 AND 52, AND THE AMERICANS WITH DISABILITIES
 ACT AS INCORPORATED
 BY CIVIL CODE SECTION 51(f)**

20 39. Plaintiffs re-plead and incorporates by reference, as if fully set forth again herein,
 21 the allegations contained in Paragraphs 1 through 38 of this Complaint and incorporates them
 22 herein as if separately re-pledged.

23 40. At all times relevant to this action, the Unruh Civil Rights Act, California Civil
 24 Code § 51(b), provided that:

25 All persons within the jurisdiction of this state are free and equal, and no matter
 26 what their sex, race, color, religion, ancestry, national origin, disability, or medical
 27 condition are entitled to the full and equal accommodations, advantages, facilities,
 privileges, or services in all business establishments of every kind whatsoever.

28 41. California Civil Code section 52 provides that the discrimination by Defendant

1 against Plaintiffs on the basis of disability constitutes a violation of the general anti-
 2 discrimination provisions of sections 51 and 52.

3 42. Each of Defendant's discriminatory acts or omissions constitutes a separate and
 4 distinct violation of California Civil Code section 52, which provides that:

5 Whoever denies, aids or incites a denial, or makes any discrimination or distinction
 6 contrary to section 51, 51.5, or 51.6 is liable for each and every offense for the
 7 actual damages, and any amount that may be determined by a jury, or a court sitting
 8 without a jury, up to a maximum of three times the amount of actual damage but in
 no case less than four thousand dollars (\$4,000), and any attorney's fees that may
 be determined by the court in addition thereto, suffered by any person denied the
 rights provided in Section 51, 51.5, or 51.6.

9 43. Any violation of the Americans with Disabilities Act of 1990 constitutes a
 10 violation of California Civil Code section 51(f), thus independently justifying an award of
 11 damages and injunctive relief pursuant to California law, including Civil Code section 52. Per
 12 Civil Code section 51(f), "A violation of the right of any individual under the Americans with
 13 Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section."

14 44. The actions and omissions of Defendant as herein alleged constitute a denial of
 15 access to and use of the described public facilities by disabled persons who use service dogs, and
 16 those associated with them, within the meaning of California Civil Code sections 51 and 52. As a
 17 proximate result of Defendant's action and omissions, Defendant has discriminated against
 18 Plaintiff in violation of Civil Code sections 51 and 52, and are responsible for statutory and
 19 compensatory to Plaintiff, according to proof.

20 45. **FEES AND COSTS:** As a result of Defendants' acts, omissions and conduct,
 21 Plaintiffs have been required to incur attorney fees, litigation expenses and costs as provided by
 22 statute in order to enforce Plaintiffs' rights and to enforce provisions of law protecting access for
 23 disabled persons and those associated with them and prohibiting discrimination against disabled
 24 persons and those associated with them. Plaintiffs therefore seek recovery of all reasonable
 25 attorney fees, litigation expenses and costs pursuant to the provisions of California Civil Code
 26 sections 51 and 52. Additionally, Plaintiffs' lawsuit is intended to require that Defendant make
 27 its facilities and policies accessible to all disabled members of the public, justifying "public
 28 interest" attorney fees, litigation expenses and costs pursuant to the provisions of California Code

of Civil Procedure section 1021.5 and other applicable law.

46. Plaintiffs suffered damages as above-described as a result of Defendants' violations.

WHEREFORE, Plaintiffs pray for relief as hereinafter stated.

**THIRD CAUSE OF ACTION:
DAMAGES AND INJUNCTIVE RELIEF
FOR DENIAL OF FULL AND EQUAL ACCESS TO PUBLIC FACILITIES IN A
PUBLIC ACCOMMODATION
(Civil Code §§ 54 *et seq.*)**

8 47. Plaintiffs re-plead and incorporate by reference, as if fully set forth hereafter, the
9 factual allegations contained in Paragraphs 1 through 46 of this Complaint and all paragraphs of
10 the third cause of action, as plead infra, incorporates them herein as if separately re-pleaded.

11 48. Under the California Disabled Persons Act (CDPA), people with disabilities and
12 those associated with them are entitled to the “full and free use of . . . public buildings, . . . public
13 facilities, and other public places.” Civil Code § 54(a).

14 49. Civil Code section 54.1(a)(1) further guarantees the right of “full and equal
15 access” by persons with disabilities and those associated with them to “accommodations,
16 advantages, facilities . . . hotels, lodging places of accommodation, amusement or resort, or other
17 places to which the general public is invited.” Civil Code § 54.1(c) also specifies that,
18 “individuals with a disability and persons authorized to train service dogs for individuals with a
19 disability, may take dogs, for the purpose of training them as guide dogs, signal dogs, or service
20 dogs in any of the places specified in subdivisions (a) and (b).”

21 50. Civil Code section 54.2(a) specifically protects the right of “every individual with
22 a disability” “to be accompanied by a guide dog, signal dog, or service dog, especially trained for
23 the purpose, in any of the places specified in Section 54.1.”

24 51. Civil Code section 54.3(b) makes liable “Any person or persons, firm or
25 corporation who denies or interferes with admittance to or enjoyment of the public facilities as
26 specified in Sections 54 and 54.1 or otherwise interferes with the rights of an individual with a
27 disability under Sections 54, 54.1 and 54.2.” This section also specifies that, “[I]nterfere,’ for
28 purposes of this section, includes, but is not limited to, preventing or causing the prevention of a

1 guide dog, signal dog, or service dog from carrying out its functions in assisting a disabled
 2 person.”

3 52. Defendant is also in violation of California Penal Code section 365.5(b) which
 4 states:

5 No blind person, deaf person, or disabled person and his or her specially trained
 6 guide dog, signal dog, or service dog shall be denied admittance to
 7 accommodations, advantages, facilities, medical facilities, including hospitals,
 8 clinics, and physicians' offices, telephone facilities, adoption agencies, private
 schools, hotels, lodging places, places of public accommodation, amusement or
 resort, and other places to which the general public is invited within this state
 because of that guide dog, signal dog, or service dog.

9 53. Pacifica Beach Hotel is a public accommodation within the meaning of the CDPA.
 10 On information and belief, Defendant is the owner, operator, lessor or lessee of the public
 11 accommodation.

12 54. Defendant made the decision to knowingly and willfully exclude Plaintiff, his
 13 service dog, and his companion from its public accommodation by charging them an extra fee and
 14 thereby deny Plaintiff Spector's his right of entrance into their place of business with his service
 15 dog, and Plaintiff Burgess was denied entry on the bases of her association with Plaintiff Spector.
 16 As a result of that decision Plaintiffs have faced the continuing discrimination of being essentially
 17 barred from entering this public accommodation and place of business based upon Defendant's
 18 illegal fees for Plaintiff Spector's legally protected use of his service dog. Plaintiffs have
 19 continued to suffer denial of access to these facilities, and faces the prospect of unpleasant and
 20 discriminatory treatment should they attempt to return to these facilities. Plaintiffs are unable to
 21 return to Pacifica Beach Hotel until they receive the protection of this Court's injunctive relief,
 22 and they have continued to suffer discrimination on a daily basis since August 16, 2023, all to
 23 their statutory damages pursuant to California Civil Code §§ 54.1, 54.2, and 54.3 and California
 24 Penal Code section 365.5.

25 55. **INJUNCTIVE RELIEF:** Plaintiffs seeks injunctive relief to prohibit the acts and
 26 omissions of Defendant as complained of herein which are continuing on a day-to-day basis and
 27 which have the effect of wrongfully excluding Plaintiffs and other members of the public who are
 28 disabled, who require the assistance of service animals, and those associated with them from full

1 and equal access to these public facilities. Such acts and omissions are the cause of humiliation
2 and mental and emotional suffering of Plaintiffs in that these actions continue to treat Plaintiffs as
3 inferior and second-class citizens and serve to discriminate against them on the sole basis that
4 Plaintiff Spector is a person with disabilities who requires the assistance of a service animal and
5 Plaintiff Burgess' association with him.

6 56. Plaintiffs wish to return to patronize the Pacifica Beach Hotel but are deterred
7 from returning to use these facilities, because the lack of access and the significant policy barriers
8 will foreseeably cause them further difficulty, discomfort and embarrassment, and Plaintiffs are
9 unable, so long as such acts and omissions of Defendant continue, to achieve equal access to and
10 use of these public facilities. Therefore, Plaintiffs cannot return to patronize the Pacifica Beach
11 Hotel and its facilities and is deterred from further patronage until these facilities are made
12 properly accessible for disabled persons, including Plaintiff and other disabled individuals who
13 require the assistance of a service animal and those associated with them.

14 57. The acts of Defendant have proximately caused and will continue to cause
15 irreparable injury to Plaintiffs if not enjoined by this Court. Plaintiffs seek injunctive relief as to
16 Defendant's inaccessible policies. As to the Defendant that currently owns, operates, and/or
17 leases (from or to) the subject premises, Plaintiffs seek preliminary and permanent injunctive
18 relief to enjoin and eliminate the discriminatory practices that deny full and equal access for
19 disabled persons and those associated with them, and seeks an award of reasonable statutory
20 attorney fees, litigation expenses and costs.

21 58. Wherefore Plaintiffs ask this Court to preliminarily and permanently enjoin any
22 continuing refusal by Defendant to grant full and equal access to Plaintiffs in the ways
23 complained of and to require Defendant to comply forthwith with the applicable statutory
24 requirements relating to access for disabled persons and those associated with them. Such
25 injunctive relief is provided by California Civil Code sections 54.1, 54.2 and 55, and other laws.
26 Plaintiffs further request that the Court award damages pursuant to Civil Code section 54.3 and
27 other law and attorney fees, litigation expenses, and costs pursuant to Civil Code sections 54.3
28 and 55, Code of Civil Procedure section 1021.5 and other law, all as hereinafter prayed for.

1 59. **DAMAGES:** As a result of the denial of full and equal access to the described
 2 facilities and due to the acts and omissions of Defendant in owning, operating, leasing,
 3 constructing, altering, and/or maintaining the subject facilities, Plaintiffs have suffered a violation
 4 of their civil rights, including but not limited to rights under Civil Code sections 54 and 54.1, and
 5 have suffered difficulty, discomfort and embarrassment, and physical, mental and emotional
 6 personal injuries, all to his damages per Civil Code section 54.3, including general and statutory
 7 damages, as hereinafter stated. Defendant's actions and omissions to act constitute discrimination
 8 against Plaintiffs on the basis that Plaintiff Spector was and is disabled and unable, because of the
 9 policy barriers created and/or maintained by the Defendant in violation of the subject laws, to use
 10 the public facilities on a full and equal basis as other persons and Plaintiff Burgess' association
 11 with Plaintiff Spector. The violations have deterred Plaintiffs from returning to attempt to
 12 patronize the Pacifica Beach Hotel and will continue to cause them damages each day these
 13 barriers to access and policy barriers continue to be present.

14 60. Although it is not necessary for Plaintiffs to prove wrongful intent in order to show
 15 a violation of California Civil Code sections 54 and 54.1 or of Title III of the ADA (*see Donald v.*
 16 *Café Royale*, 218 Cal. App. 3d 168 (1990)), Defendant's behavior was intentional. Defendant was
 17 aware and/or was made aware of its duties to refrain from establishing discriminatory policies
 18 against disabled persons, prior to the filing of this complaint. Defendant's establishment of their
 19 discriminatory policy to deny and restrict entry to persons with service dogs, and their
 20 implementation of such a discriminatory policy against Plaintiffs, indicate actual and implied
 21 malice toward Plaintiffs and conscious disregard for Plaintiffs' rights and safety.

22 61. **FEES AND COSTS:** As a result of Defendant's acts, omissions, and conduct,
 23 Plaintiffs have been required to incur attorney fees, litigation expenses, and costs as provided by
 24 statute, in order to enforce Plaintiffs' rights and to enforce provisions of the law protecting access
 25 for disabled persons and those associated with them and prohibiting discrimination against
 26 disabled persons and those associated with them. Plaintiffs therefore seek recovery of all
 27 reasonable attorney fees, litigation expenses, and costs, pursuant to the provisions of Civil Code
 28 sections 54.3 and 55. Additionally, Plaintiffs' lawsuit is intended to require that Defendant make

1 its facilities accessible to all disabled members of the public, justifying “public interest” attorney
2 fees, litigation expenses and costs pursuant to the provisions of California Code of Civil
3 Procedure section 1021.5 and other applicable law.

4 62. Plaintiffs suffered damages as above described as a result of Defendant’s
5 violations. Damages are ongoing based on their deterrence from returning to Pacifica Beach
6 Hotel.

7 WHEREFORE, Plaintiffs pray for relief as hereinafter stated.

8 **PRAYER**

9 Plaintiffs have no adequate remedy at law to redress the wrongs suffered as set forth in
10 this Complaint. Plaintiffs have suffered and will continue to suffer irreparable injury as a result
11 of the unlawful acts, omissions, policies, and practices of the Defendant as alleged herein, unless
12 Plaintiffs are granted the relief they request. Plaintiffs and Defendant have an actual controversy
13 and opposing legal positions as to Defendant’s violations of the laws of the United States and the
14 State of California. The need for relief is critical because the rights at issue are paramount under
15 the laws of the United States and the State of California.

16 WHEREFORE, Plaintiffs Paul Spector and Joan Burgess pray for judgment and the
17 following specific relief against Defendant:

18 1. An order enjoining Defendant, its agents, officials, employees, and all persons
19 acting in concert with them:

20 a. From continuing the unlawful acts, conditions, and practices described in this
21 Complaint;

22 b. To modify its policies and practices to accommodate service dog users in
23 conformity with federal and state law, and to advise Plaintiffs that Plaintiff
24 Spector’s service dog will not be excluded and they will not be charged any
25 additional “pet fees” should they desire to enter and use the services of the Pacifica
26 Beach Hotel;

27 c. That the Court issue preliminary and permanent injunction directing Defendant as
28 current owner, operator, lessor, and/or lessee and/or its agents of the subject

1 property and premises to modify the above described property, premises, policies
2 and related policies and practices to provide full and equal access to all persons,
3 including persons with disabilities; and issue a preliminary and permanent
4 injunction pursuant to ADA section 12188(a) and state law directing Defendant to
5 provide facilities usable by Plaintiffs and similarly situated persons with
6 disabilities and those associated with them, and which provide full and equal
7 access, as required by law, and to maintain such accessible facilities once they are
8 provided and to train Defendant's employees and agents in how to recognize
9 disabled persons and accommodate their rights and needs;

10 d. An order retaining jurisdiction of this case until Defendant has fully complied with
11 the orders of this Court, and there is a reasonable assurance that Defendant will
12 continue to comply in the future absent continuing jurisdiction;

13 2. An award to Plaintiffs of statutory, actual, general, and punitive damages in
14 amounts within the jurisdiction of the Court, all according to proof;

15 3. An award of civil penalty as against Defendant under California Penal Code §
16 365.5(c);

17 4. An award to Plaintiffs pursuant to 42 U.S.C. § 12205, 29 U.S.C. § 794a, California
18 Civil Code §§ 52 and 54.3, California Code of Civil Procedure § 1021.5, and as otherwise
19 permitted by law, of the costs of this suit and reasonable attorneys' fees and litigation expenses;

20 5. An award of prejudgment interest pursuant to Civil Code § 3291;

21 6. Interest on monetary awards as permitted by law; and

22 7. Grant such other and further relief as this Court may deem just and proper.

23 Date: November 6, 2023

REIN & CLEFTON

24 /s/ Aaron M. Clefton
25 By AARON M. CLEFTON, Esq.
26 Attorneys for Plaintiffs
27 PAUL SPECTOR and JOAN BURGESS
28

1 **JURY DEMAND**

2 Plaintiff hereby demands a trial by jury for all claims for which a jury is permitted.

3 Date: November 6, 2023

REIN & CLEFTON

4 /s/ Aaron M. Clefton
5 By AARON M. CLEFTON, Esq.

6 Attorneys for Plaintiff

7 PAUL SPECTOR and JOAN BURGESS

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